

**FILED**

NOV 25 2008

  
CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

---

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

and

Civil Action No. 06-4176 LLP

GEORGE CLARK, JR., RICKY  
JOHNSON, and JAMES MEIER,

Plaintiff-Intervenors,

**PROPOSED  
CONSENT DECREE**

v.

SARA LEE CORPORATION, d/b/a  
SARA LEE BAKERY GROUP,

Defendant.

---

**INTRODUCTION**

Plaintiff Equal Employment Opportunity Commission (hereinafter the "EEOC") has instituted this action alleging that Sara Lee Corporation, d/b/a Sara Lee Bakery Group ("Sara Lee") denied James Meier and George Clark promotions to relief foreperson and foreperson because of their race, African-American, in violation of Title VII of the Civil Rights Act of 1964. Mr. Meier, Mr. Clark and Rickey Johnson have intervened in this action as Plaintiff-Intervenors and additionally assert claims under state law.

THEREFORE, upon the consent of the parties, and upon review by the Court of these terms, it is

ORDERED, ADJUDGED, and DECREED that the following terms are approved as set forth herein:

**I. JURISDICTION**

This Court has jurisdiction over the parties and the subject matter of this action.

**II. FINDINGS**

**A.** The purposes of Title VII and public interest will be furthered by the entry of this Decree.

**B.** The terms of this Decree constitute a fair and equitable settlement of this action.

**III. SCOPE**

By entering into this Decree the parties do not intend to resolve any charges of discrimination currently pending before the EEOC other than the charges that created the procedural foundation for the Complaint in this case. Sara Lee represents that it has no other charges of race discrimination pending before the EEOC related to its Sioux Falls, SD, facility other than those forming the procedural basis of this case.

This Decree does not constitute an admission by Sara Lee that the EEOC's claims against it had merit. Similarly, this Decree does not constitute a concession by the EEOC as to the merits of its action.

**IV. TERM**

The Term of this decree shall be two (2) years from the Effective Date hereof. The Effective Date hereof shall be the date that the District Court enters a final order approving this Consent Decree.

## **V. INJUNCTION AGAINST DISCRIMINATION AND RETALIATION**

Sara Lee is enjoined from discriminating against any employee or applicant because of race. Sara Lee shall not discriminate against African-American employees based upon race in promotions. Sara Lee shall afford all African-American employees the same training and conditions of employment it affords all other employees in similar positions. Sara Lee shall not retaliate against any employee or class member for opposing matters made unlawful by Title VII, participating in investigations of complaints of discrimination, participating in the EEOC process, participating in this lawsuit or for having asserted any rights under this Decree.

## **VI. INJUNCTION REGARDING RECORDKEEPING**

Sara Lee will comply with the recordkeeping requirements set forth in Title VII and its regulations. Upon receipt of a charge of discrimination, Sara Lee shall retain all documents relevant to the charge or which it should reasonably understand are relevant to the EEOC's investigation.

## **VII. INTERNAL COMPLAINT PROCEDURES**

### **A. Notice to Employees**

Within 60 days of the entry of this Decree, Sara Lee will distribute to all its employees in its Sioux Falls, SD, facility a notice describing the existing procedures for the reporting and investigation of claims of discrimination, harassment or retaliation. At a minimum, the notice shall:

1. specify how an employee may make a complaint internally to Sara Lee under the procedure;
2. include a provision that specifically notifies employees that they are not required to complain to their immediate supervisors or local facility supervisors

before they use other complaint procedures, and that at any time they may make complaints of discrimination, harassment or retaliation directly to the EEOC.

**B. Review and Revision of Procedures**

Within 60 days of the entry of this Decree, Sara Lee will review its internal complaint procedures at its Sioux Falls, SD, facility for complaints of discrimination and retaliation to ensure that its policy or policies against discrimination, harassment, and retaliation and its related complaint procedures meet the following minimum criteria:

1. State that Sara Lee:

- (a) prohibits discrimination against employees on the basis of race;
- (b) prohibits retaliation against employees for opposing employment practices that they reasonably believe are discriminatory or for participating in an investigation by the EEOC or a state or local governmental agency of a charge of discrimination under Title VII;
- (c) prohibits any act, policy, or practice that has the effect of harassing or intimidating any employee on the basis of race in violation of Title VII; and
- (d) prohibits any act, policy, or practice that has the effect of creating, facilitating, or permitting the existence of a work environment that is hostile to employees through acts such as physical or verbal abuse and derogatory comments based on race in violation of Title VII.

2. Include a complaint procedure designed to encourage employees to come forward with complaints regarding violations of its policy or policies against

discrimination, harassment and retaliation, which shall meet the following minimum criteria:

- (a) provide effective mechanism(s) for reporting incidents of discrimination, harassment, and retaliation;
- (b) provide that complaints of discrimination, harassment, and/or retaliation can be made either in writing or verbally;
- (c) identify employees to whom an employee can make a complaint;
- (d) encourage prompt reporting by employees;
- (e) provide assurances that complainants shall not be subjected to retaliation;
- (f) provide for prompt investigation of complaints of harassment and/or retaliation; and
- (g) provide for discipline up to and including discharge of an employee or supervisor who violates Sara Lee's policy or policies against discrimination, harassment, and retaliation.

Within 180 days of the entry of this Decree, and annually thereafter during the term of the Decree, Sara Lee will provide the EEOC with a letter from its in-house employment counsel certifying that its policies and procedures meet these minimum criteria.

#### **VIII. JOB DESCRIPTIONS FOR BREAD LINE, BUN LINE, AND DOCK FOREPERSON AND RELIEF FOREPERSON**

A. Sara Lee shall develop detailed job descriptions for the Relief Foreperson and Foreperson positions on the Bread Line, Bun Line and Dock in Sara Lee's Sioux Falls facility. The job descriptions shall include duties and minimum qualifications for each

position. The job descriptions shall be developed within one hundred twenty (120) days of the Effective Date of the Decree.

B. Upon adoption, the job descriptions shall be accessible to all employees in the Sioux Falls, SD, facility and shall be referenced in any Open Position Notice described in Section IX.

**IX. OPEN POSITION NOTICE FOR BREAD LINE, BUN LINE, AND DOCK FOREPERSON AND RELIEF FOREPERSON**

A. Sara Lee shall develop an Open Position Notice for the Bread Line, Bun Line and Dock Foreperson and Relief Foreperson positions. Sara Lee will conspicuously post all openings in such positions as well as any open positions for Managers using the Open Position Notice. For each opening, the Open Position Notice shall list the minimum qualifications for the position, the expected starting date, the procedure for submitting an application, the deadline for submitting the application, and the location/availability of the Job Description for the position. The Open Position Notice shall be posted for a minimum of five (5) business days in a location that is readily accessible to all employees.

B. Sara Lee shall select the successful candidate for each Open Position from among Eligible Applicants. An Eligible Applicant is defined as a current Sara Lee employee who has submitted a timely application and who meets the minimum qualifications listed in the Open Position Notice. The minimum qualifications shall be those listed in the applicable job description.

C. Only if there are no Eligible Applicants may Sara Lee fill the position with a person who did not submit a timely application. The selecting official shall document in writing the reason for the selection of a person who did not submit a timely application.

Such documents shall be submitted to the EEOC pursuant to the reporting requirements set forth below at Section XII.

**D.** All unsuccessful Eligible Applicants will be notified in writing of their non-selection, and if the selected candidate has been notified and agreed to take the position, the unsuccessful Eligible Applicants shall be notified of the identity of the selected candidate. Such a notification shall be before or concurrent with any announcement to the general employees of the placement.

## **X. SUPERVISOR ACCOUNTABILITY**

During the duration of this Decree, Sara Lee shall promote supervisor accountability at its Sioux Falls, SD, facility by the following conduct:

- A.** Providing anti-discrimination training as set forth in Section XI below;
- B.** Enforcing its policy or policies against discrimination, harassment, and retaliation, including use of appropriate counseling and discipline (up to and including discharge) for all employees at the supervisor level and above who violate the policy;
- C.** Imposing a duty on all employees at the supervisor level and above to administer their work areas to ensure compliance with Sara Lee's policy or policies against discrimination, harassment, and retaliation;
- D.** Requiring all employees at the supervisor level and above to report any incidents or complaints of racial discrimination, harassment or retaliation of which they become aware to the human resources function at the facility or, when appropriate, to Sara Lee's Headquarters Office;

E. Informing all employees at the supervisor level and above to comply with Sara Lee's internal document retention and destruction policies and the requirements of 42 U.S.C. § 20003-8(c), 29 C.F.R. § 1602.14, and 29 C.F.R. § 1627.3;

F. Enforcing its internal document retention and destruction policies, including use of appropriate counseling and discipline (up to and including discharge) for all employees at the supervisor level and above who violate the policies; and

G. Informing all employees at the supervisor level and above that they have an obligation to ensure compliance with Sara Lee's internal document retention and destruction policies.

## **XI. TRAINING**

Sara Lee shall provide training on the requirements of Title VII on the following terms:

A. Within 60 days of the Effective Date of this Decree, Sara Lee shall provide annual training sessions to all of its Managers, Supervisors, Forepersons, and Relief Forepersons in its Sioux Falls, SD, facility regarding an employee's rights under Title VII, and the employer's obligations under Title VII, with an emphasis on what constitutes differential treatment of minority employees in the workplace, how to keep Sara Lee free of such forms of discrimination, and what constitutes unlawful retaliation. The first training session will be conducted through a live presentation, and will include a statement from an executive, manager, human resource, in-house employment lawyer or employee relations professional of Sara Lee emphasizing Sara Lee's commitment to prevent discrimination and harassment. Subsequent sessions can be conducted through web-based training modules, and if appropriate, can be broken up into multiple sessions.

**B.** Within 60 days of the Effective Date of this Decree, Sara Lee will provide training to all managers and all employees and supervisors in its Human Resources Department at its Sioux Falls, SD, facility, regarding how to conduct a prompt and effective investigation into allegations, complaints, or charges of employment discrimination; regarding compliance with Sara Lee's internal document retention and destruction policies; and regarding the recordkeeping requirements of Title VII and its regulations.

**C.** No later than 30 days prior to the first day of the proposed training, Sara Lee shall submit to the EEOC the name(s), address(es), telephone number(s), and curriculum vitae/resume(s) of its trainer(s), together with the date(s) of the proposed training sessions. Sara Lee shall provide the EEOC with copies of all pamphlets, brochures, outlines, or other written materials provided to the participants of the training sessions.

**D.** Within five business days after the training sessions as set forth in Section XI (A) and (B) have occurred, Sara Lee shall send a letter to the undersigned EEOC trial attorney, certifying to the EEOC that the training has taken place and that the required personnel have attended.

## **XII. RECORDKEEPING**

**A.** Sara Lee shall maintain the following records for the term of this Decree:

**1.** Each complaint of any incident of race and retaliation discrimination from an applicant or employee in its Sioux Falls, SD facility. Each complaint shall be memorialized in writing, indicating the date on which the complaint was made, who made it, what was alleged, and any action that Sara Lee took to resolve the matter;

2. Job applications, resumes, or any other form of employment inquiry for Bread Line, Bun Line or Dock Foreperson or Relief Foreperson positions at its Sioux Falls, SD facility whenever submitted to Sara Lee, whether in printed or electronic form;
3. Documents, whether in printed or electronic form, relating to the application, interviews of job applicants, and selection of for Bread Line, Bun Line or Dock Foreperson or Relief Foreperson positions at its Sioux Falls, SD facility; and
4. All other personnel or employment records regarding applicants for Bread Line, Bun Line or Dock Foreperson or Relief Foreperson positions at its Sioux Falls, SD facility, including (but not limited to) documents related to hiring or refusals to hire, as specified in 42 U.S.C. § 20003-8(c), 29 C.F.R. § 1602.14, and 29 C.F.R. § 1627.3.

B. Nothing contained in this Decree shall be construed to limit any obligation that Sara Lee may otherwise have to maintain records or documents under Title VII or any other law or regulation.

### **XIII. POSTING AND POLICIES**

A. Sara Lee shall post and cause to remain posted the posters required to be displayed in the workplace by EEOC regulation 29 C.F.R. §1601.30 in all facilities owned and operated by Sara Lee.

B. Sara Lee shall post and cause to remain posted the Notice attached as Exhibit A in those places in the Sioux Falls, SD facility where employee notices are generally posted in its workplace.

#### **XIV. MONETARY REMEDY**

- A.** Sara Lee agrees to pay a total of \$245,000 in resolution of this matter.
- B.** This total amount shall be distributed to James Meier, George Clark, and Rickey Johnson, and to their attorneys, pursuant to the terms separately negotiated between the counsel for Plaintiff-Intervenors and Sara Lee, and contingent upon the Plaintiff-Intervenors executing a release negotiated between them. The EEOC has not reviewed, approved or disapproved the terms of the separate release.

#### **XV. REPORTING**

- A.** Sara Lee shall submit to the EEOC on an annual basis a certification of compliance with this Decree. The EEOC may review Sara Lee's compliance with the Decree during the term of this Decree upon written notice to Sara Lee's attorney of record at least seven (7) business days in advance of any inspection of Sara Lee's documents or premises. Upon such notice, Sara Lee shall allow representatives of the EEOC to review Sara Lee's compliance with this Decree by inspecting and photocopying relevant documents and records and inspecting their premises.
- B.** Annually during the term of this Decree, Sara Lee shall notify the EEOC of any written complaints of race discrimination or retaliation relating to its Sioux Falls, SD facility, the name and address of the person making the complaint, and the disposition of the complaint. Sara Lee shall submit to the EEOC any documents that the EEOC requests relating to the complaint.

Dated: \_\_\_\_\_, 2008

---

Judge Lawrence Piersol  
United States District Court Judge

BY CONSENT:

FOR DEFENDANT:

---



Lisa Hansen Marso  
Boyce, Greenfield, Pashby & Welk, L.L.P.  
101 North Phillips Avenue, Suite 600  
P.O. Box 5015  
Sioux Falls, SD 57117-5015  
(605) 336-2424

Joseph E. Tilson  
Michael I. Leonard  
Meckler Burger Tilson Marick & Pearson LLP  
123 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 474-7900

FOR PLAINTIFF EEOC:

---

John C. Hendrickson  
Regional Attorney

---

Jean P. Kamp  
Associate Regional Attorney  
Equal Employment Opportunity Commission  
Chicago District Office  
500 West Madison Street  
Suite 2000  
Chicago, IL 60661  
(800) 669-4000

---

Laurie A. Vasichek  
Minnesota Bar Number 0171438  
Senior Trial Attorney  
Equal Employment Opportunity Commission  
330 Second Avenue South, Suite 430  
Minneapolis, MN 55401  
(612) 335-4061

FOR CHARGING PARTY  
RICKEY JOHNSON:

---

Michael W. Strain  
Morman Law Firm  
850 Main Street  
P.O. Box 729  
Sturgis, SD 57785  
(605) 347-3624

FOR CHARGING PARTIES  
JAMES MEIER AND GEORGE CLARK:

---

Scott G. Hoy  
Hoy Trial Lawyers, Prof. L.L.C.  
1608 West Russell Street  
Sioux Falls, SD 57104  
(605) 334-8900

BY CONSENT:

FOR DEFENDANT:

---

Lisa Hansen Marso  
Boyce, Greenfield, Pashby & Welk, L.L.P.  
101 North Phillips Avenue, Suite 600  
P.O. Box 5015  
Sioux Falls, SD 57117-5015  
(605) 336-2424

Joseph E. Tilson  
Michael I. Leonard  
Meckler Burger Tilson Marick & Pearson LLP  
123 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 474-7900

FOR PLAINTIFF EEOC:

---

John C. Hendrickson  
Regional Attorney

---

Jean P. Kamp  
Associate Regional Attorney  
Equal Employment Opportunity Commission  
Chicago District Office  
500 West Madison Street  
Suite 2000  
Chicago, IL 60661  
(800) 669-4000

---

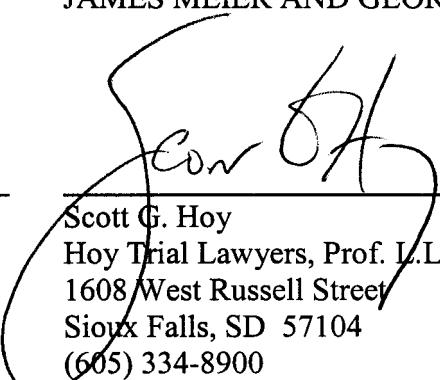
Laurie A. Vasichek  
Minnesota Bar Number 0171438  
Senior Trial Attorney  
Equal Employment Opportunity Commission  
330 Second Avenue South, Suite 430  
Minneapolis, MN 55401  
(612) 335-4061

FOR CHARGING PARTY  
RICKEY JOHNSON:

---

Michael W. Strain  
Morman Law Firm  
850 Main Street  
P.O. Box 729  
Sturgis, SD 57785  
(605) 347-3624

FOR CHARGING PARTIES  
JAMES MEIER AND GEORGE CLARK:



---

Scott G. Hoy  
Hoy Trial Lawyers, Prof. L.L.C.  
1608 West Russell Street  
Sioux Falls, SD 57104  
(605) 334-8900

BY CONSENT:

FOR DEFENDANT:

FOR PLAINTIFF EEOC:

---

Lisa Hansen Marso  
Boyce, Greenfield, Pashby & Welk, L.L.P.  
101 North Phillips Avenue, Suite 600  
P.O. Box 5015  
Sioux Falls, SD 57117-5015  
(605) 336-2424

Joseph E. Tilson  
Michael I. Leonard  
Meckler Burger Tilson Marick & Pearson LLP  
123 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 474-7900

---

John C. Hendrickson  
Regional Attorney

---

Jean P. Kamp  
Associate Regional Attorney  
Equal Employment Opportunity Commission  
Chicago District Office  
500 West Madison Street  
Suite 2000  
Chicago, IL 60661  
(800) 669-4000

---

Laurie A. Vasichek  
Minnesota Bar Number 0171438  
Senior Trial Attorney  
Equal Employment Opportunity Commission  
330 Second Avenue South, Suite 430  
Minneapolis, MN 55401  
(612) 335-4061

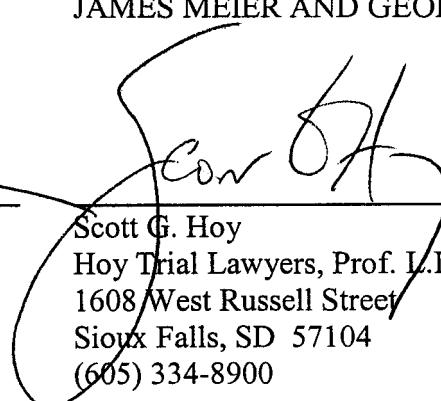
FOR CHARGING PARTY  
RICKEY JOHNSON:



---

Michael W. Strain  
Morman Law Firm  
850 Main Street  
P.O. Box 729  
Sturgis, SD 57785  
(605) 347-3624

FOR CHARGING PARTIES  
JAMES MEIER AND GEORGE CLARK:



---

Scott G. Hoy  
Hoy Trial Lawyers, Prof. L.L.C.  
1608 West Russell Street  
Sioux Falls, SD 57104  
(605) 334-8900

BY CONSENT:

FOR DEFENDANT:

---

Lisa Hansen Marso  
Boyce, Greenfield, Pashby & Welk, L.L.P.  
101 North Phillips Avenue, Suite 600  
P.O. Box 5015  
Sioux Falls, SD 57117-5015  
(605) 336-2424

Joseph E. Tilson  
Michael I. Leonard  
Meckler Burger Tilson Marick & Pearson LLP  
123 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 474-7900

FOR PLAINTIFF EEOC:

John C. Hendrickson

John C. Hendrickson  
Regional Attorney

Jean P. Kamp

Jean P. Kamp  
Associate Regional Attorney  
Equal Employment Opportunity Commission  
Chicago District Office  
500 West Madison Street  
Suite 2000  
Chicago, IL 60661  
(800) 669-4000

Laurie A. Vasichek

Laurie A. Vasichek  
Minnesota Bar Number 0171438  
Senior Trial Attorney  
Equal Employment Opportunity Commission  
330 Second Avenue South, Suite ~~420~~ 720  
Minneapolis, MN 55401  
(612) 335-4061

FOR CHARGING PARTY  
RICKEY JOHNSON:

---

Michael W. Strain  
Morman Law Firm  
850 Main Street  
P.O. Box 729  
Sturgis, SD 57785  
(605) 347-3624

FOR CHARGING PARTIES  
JAMES MEIER AND GEORGE CLARK:

---

Scott G. Hoy  
Hoy Trial Lawyers, Prof. L.L.C.  
1608 West Russell Street  
Sioux Falls, SD 57104  
(605) 334-8900